

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: ASBESTOS PRODUCTS
LIABILITY LITIGATION (No. VI)

MDL DOCKET NO.: 875

PAUL W. GEHRT,
Plaintiff

v.

PA-ED Case No. 2:08-cv-92066-ER
Trans. from IL-CD Case No. 96-02071

AC & S INC. ET AL.,
Defendants

**CERTAIN DEFENDANTS' MOTION FOR EXTENSION OF TIME
TO FILE CERTAIN EXPERT REPORTS**

COME NOW, Certain Defendants¹, pursuant to Federal Rule of Civil Procedure 16(b)(4), and move for a fourteen-day extension to file two expert reports. For good cause and in support of this Motion, Defendants state as follows:

1. On November 16, 2011, the Court entered an Amended Case Management and Scheduling Order ("Scheduling Order") for the Top Ten Cases.
2. The Scheduling Order requires Defendants to file expert reports on or before January 6, 2012.
3. The filing Defendants, as well as numerous additional co-defendants, designated five experts who are responsible for preparing a total of twenty-two written reports for the Top Ten Cases. Of the twenty-two reports, only two have not yet been filed.
4. Defendants designated a pathologist, Dr. Mark Wick, in five of the Top Ten Cases: *Bushmaker, Gehrt, Goeken, Krik, and Wright*. Dr. Wick prepared and Defendants

¹ Certain Defendants include CBS Corporation, A Delaware Corporation, f/k/a Viacom Inc., Successor by Merger to CBS Corporation, A Pennsylvania Corporation, f/k/a Westinghouse Electric Corporation, General Electric Company, Georgia-Pacific LLC, and Owens-Illinois, Inc. d/b/a O-I.

filed reports in three of the five cases, including *Goeken*. However, due to the circumstances described herein, Dr. Wick was unable to timely prepare two of the reports related to *Goeken* and *Gehrt*.

5. In the *Goeken* case, Defendants were originally advised by Proctor Hospital in Peoria, Illinois, that all pathology related to Plaintiff Marion Goeken had been destroyed. However, on December 12, 2011, counsel for Defendants received pathology related to Marion Goeken from Proctor Hospital. Counsel for Defendants immediately sent the pathology to Dr. Wick on December 12, 2011, which was the same day it was received, but Dr. Wick has not yet provided a report based on his review of the pathology. Dr. Wick has, however, prepared a report based on his review of Plaintiff Marion Goeken's medical records, and that report was filed with Defendants' disclosures. As for the *Gehrt* case, Dr. Wick simply has been unable to prepare his report based on the volume of records in all five cases and the recent holiday schedule.
6. Due to the foregoing circumstances, Defendants request a fourteen-day extension to file Dr. Wick's reports in the *Goeken* and *Gehrt* cases for good cause pursuant to Federal Rule of Civil Procedure 16(b)(4). "Good cause may be because of 'any mistake, excusable neglect or any other factor which might understandably account for failure of counsel to undertake to comply with the Scheduling Order.'" *Combined Insurance Company of America v. Bastian*, 2009 WL 5111794 (M.D. PA Dec. 17, 2009). The abovementioned circumstances that prevent Defendants from complying with the expert report deadline are at most excusable neglect. Moreover, the extension requested in this motion is brief; therefore, no prejudice will result to

Plaintiffs. This is not an attempt to delay this matter or to prejudice Plaintiffs in any manner.

WHEREFORE, PREMISES CONSIDERED, for good cause shown, Defendants respectfully request that this Honorable Court extend Defendants' deadline to file Dr. Wick's reports until Friday, January 20, 2012.

DATED, this the 6th day of January, 2012.

Respectfully Submitted,

/s/Jennifer M. Studebaker

Jennifer M. Studebaker (MSB#10433)
Amanda D. Summerlin (MSB# 100773)

Attorneys for Defendants CBS Corporation, A Delaware Corporation, f/k/a Viacom Inc., Successor by Merger to CBS Corporation, A Pennsylvania Corporation, f/k/a Westinghouse Electric Corporation, General Electric Company, Georgia-Pacific LLC, and Owens-Illinois, Inc. d/b/a O-I.

OF COUNSEL:

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CERTIFICATE OF SERVICE

The undersigned certifies that on January 6, 2012, the foregoing was filed with the Clerk of the Court for the United States District Court for the Eastern District of Pennsylvania using the CM/ECF system, which will send notification of such filing upon all parties who have appeared.

/s/ Jennifer M. Studebaker

JENNIFER M. STUDEBAKER